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General Insurance Company

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GEICO General Insurance Company,

Plaintiff,

v.

Gage Tucker,

Defendant.

Case No.

Complaint For Declaratory Judgment

For its Complaint against Defendant Gage Tucker, Plaintiff GEICO General Insurance Company alleges as follows:

1. Plaintiff GEICO General Insurance Company ("GEICO") is a corporation duly organized under the laws of the State of Maryland with its principal place of business in Maryland.

2. Upon information and belief, Defendant Gage Tucker is an individual residing in the State of Arizona, Pinal County.

3. Pursuant to 28 U.S.C. § 1332(a)(1), there exists complete diversity of citizenship among the parties to this action.

8. Venue is proper in this District under 28 U.S.C. § 1391(c).

(Declaratory Relief)

16. At the time of the Accident, Defendant was a passenger in the back seat of the Truck.

1 17. As a result of the Accident, Defendant has made a claim of personal injury
2 which includes medical bills in excess of \$100,000.

3 18. Defendant presented a claim against Mr. Ortega under the Policy's third-
4 party liability coverage.

5 19. GEICO paid the full per person third-party liability limit of \$100,000 to
6 the Defendant.

7 20. Defendant now claims that his personal injury damages were not fully
8 satisfied by the \$100,000 payment under the Policy's third-party liability coverage, and
9 has presented a claim under the Policy's UIM coverage for his remaining damages as a
10 result of this single vehicle accident.

11 21. Defendant claims his uncompensated personal injury damages exceed
12 \$75,000.

13 22. Under the terms of the Policy, an "underinsured motor vehicle" does not
14 include "an insured auto, provided that the insured has received the full amount of the
15 liability coverage under the Bodily Injury Coverage of [the Policy]." *See* Exhibit "A".

16 23. Under the terms of the Policy, UIM benefits are not applicable unless the
17 sum of all liability policies applicable to the loss are less than the damages the insured is
18 legally entitled to recover from the at fault driver.

19 24. Payment to Defendant under the UIM coverage would result in stacking
20 of the UIM coverage of the Policy on top of the bodily injury coverage of the Policy.
21 Stacking of the UIM coverage on top of the bodily injury coverage is not allowed under
22 the Policy.

23 25. Despite the foregoing, Defendant is seeking UIM benefits under the
24 Policy.

25 26. A controversy has arisen between GEICO and Defendant regarding the
26 obligations of GEICO to Defendant pursuant to the Policy and under the law.

27. Pursuant to 28 U.S.C. §2201, GEICO requests that this Court enter a Declaration regarding its rights and obligations under the Policy, and in particular, with regards to the application of the UIM coverage to Defendant.

WHEREFORE, Plaintiff GEICO General Insurance Company requests that Judgment be entered in its favor and against Defendant Gage Tucker as follows:

- A. For a Declaration from the Court that UIM coverage in the Policy is not applicable and not owed to Defendant;
- B. For reasonable attorney's fees and taxable costs; and
- C. For such other and further relief as the Court may deem just and proper.

DATED this 11th day of October, 2013.

Jaburg & Wilk, P.C.

/s/ Jennifer R. Erickson

Jennifer R. Erickson

Eileen GilBride

Attorneys for Plaintiff GEICO General Insurance Company